



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2019-0268; FRL-9994-77-Region 8]**

**Approval and Promulgation of Air Quality Implementation Plans; Montana;  
Incorporation by Reference Updates**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on August 6, 2018. The revisions include an update to incorporate by reference the 2016 version of the Code of Federal Regulations (CFR) and 2015 version of the United States Code (U.S.C.) within the Administrative Rules of Montana (ARM) that are part of the Montana SIP. The revisions also include administrative changes that consolidate the ARM's references to the CFR and U.S.C. and remove two CFR exemptions from incorporation by reference into the ARM. Additional revisions remove incorporation by reference of certain EPA standards for which the state already has delegated authority from the EPA, and correct an internal reference in the ARM.

**DATES:** *Comments:* Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2019-0268, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chris Dresser, Air Quality Planning Branch , EPA, Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6385, [dresser.chris@epa.gov](mailto:dresser.chris@epa.gov).

## **I. Background**

On September 29, 2017, and February 9, 2018, the Montana Board of Environmental Review conducted public hearings pursuant to 40 CFR 51.102 to consider the adoption of revisions to the ARM. The approved changes were submitted to the EPA for approval into Montana's SIP on August 6, 2018. The SIP submittal includes changes that: 1) Amend ARM 17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, and 17.8.1402 to remove repetitive text describing the location of rule reference material and centralize and consolidate those reference citations into sections 17.8.102(3) and (4); 2) Modify air quality rules by correcting an internal reference in ARM 17.8.904; 3) Amend ARM 17.8.102(2), to remove the exemptions of 40 CFR Part 63, subparts JJJJJ and KKKKK; 4) Remove references to 40 CFR parts 60, 61, and 63 in sections 17.8.102(2), 17.8.103(1)(f)-(i), 17.8.302(1)(a)-(c), 17.8.767(1)(c)-(d), 17.8.802(1)(c)-(d), 17.8.902(1)(a)-(b), and 17.8.1002(1)(a)-(b), for which Montana is already delegated authority; and 5) Update ARM 17.8.102(1) to incorporate by reference the 2016 version of the CFR and the 2015 version of the U.S.C.

## **II. Analysis of the State's Submittal**

The EPA evaluated the proposed SIP revisions (amendments to the ARM) submitted by the State on August 6, 2018. The subsequent analysis for each rule change in the SIP is as follows:

- 1) The State of Montana is requesting that the EPA revise the SIP to remove text in ARM sections 17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, and 17.8.1402 describing the location of references to the CFR and U.S.C. The location of rule reference material would be consolidated into ARM sections 17.8.102(3) and (4). Identifying this information once, in the General Provisions of ARM 17.8.102(3) and (4), would eliminate repetition of the information in ARM

17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102 and 17.8.1402. The EPA proposes to find that this revision is necessary and appropriate to efficiently describe the location of referenced material.

- 2) The State of Montana is requesting to revise the SIP to incorporate an amendment to ARM 17.8.904(7) which corrects an internal reference. In 2011, the State amended the rule, which was submitted to the EPA the following year for inclusion in the SIP. In January 2016, the EPA identified an incorrect internal reference in ARM 17.8.904(7). This change proposes to amend the text from a reference to ARM 17.8.904(5) to the correct reference to ARM 17.8.904(6). The EPA proposes to find this change necessary and appropriate as it will allow the rule to be properly implemented.
- 3) The State of Montana is requesting to revise the SIP to incorporate an amendment to ARM 17.8.102(2) which removes the exemptions for 40 CFR Part 63, subparts JJJJ and KKKKK. Subparts JJJJ and KKKKK are National Emission Standards for Hazardous Air Pollutants (NESHAP) for brick and structural clay products manufacturing and clay ceramics manufacturing, respectively. Originally adopted into the ARM in 2003, these NESHAPS were vacated and remanded by the Federal Court of Appeals for the District of Columbia Circuit on March 13, 2007, leading to their exemption in the ARM. The EPA addressed the vacatur and remand by issuing new subparts JJJJ and KKKKK on October 26, 2015. Therefore, the EPA proposes to find it necessary and appropriate to remove the exemptions for JJJJ and KKKKK; effectively incorporating the most recent federal rules covering emissions from brick

and structural clay products manufacturing and clay ceramics manufacturing into Montana's SIP.

- 4) The State of Montana is requesting removal from the SIP certain rules that incorporate by reference 40 CFR parts 60, 61, and 63. These rules include: ARM 17.8.103(1)(f)-(i) – pertaining to EPA emission source reference test methods for stationary sources, EPA performance specification and test procedures for continuous emission monitoring systems, EPA emission source reference test methods for sources subject to national emission standards for hazardous air pollutants, and emission standards for hazardous air pollutant source categories; 17.8.302(1)(a)-(c) - pertaining to standards of performance for new stationary sources and modifications, emission standards for hazardous air pollutants; and emission standards for hazardous air pollutant source categories; 17.8.767(1)(c)-(d) - specifying standards of performance for new stationary sources and for hazardous air pollutants; 17.8.802(1)(c)-(d) - specifying standards of performance for new stationary sources and for hazardous air pollutants; 17.8.902(1)(a)-(b) - specifying standards of performance for new stationary sources and for hazardous air pollutants; and 17.8.1002(1)(a)-(b) - specifying standards of performance for new stationary sources and for hazardous air pollutants. Each of these sections references federal requirements for which the State has already received federal delegation of authority. The EPA proposes to find that this update is necessary and appropriate to remove the redundancy. The EPA also proposes to find that removing the previously mentioned references to 40 CFR parts 60, 61, and 63 in the ARM does not impact any other part

of the State's SIP (i.e., no other sections of the approved SIP reference the sections that Montana is requesting for removal).

- 5) The State of Montana is requesting revisions to the SIP concerning ARM 17.8.102 to update incorporation by reference dates to reflect federal regulations published in the July 1, 2016, edition of the CFR as it is published on the website of the U.S.

Government Printing Office, and the 2015 edition of the U.S.C., as it is published on the website of the U.S. Government Printing Office. The EPA proposes to find that this change is necessary and appropriate to cite the 2015 and 2016 versions of the U.S.C. and CFR, respectively.

### **III. The EPA's Proposed Action**

In this action, the EPA is proposing to approve the SIP submittal, containing recent amendments to the ARM, submitted by the State of Montana on August 6, 2018. This action proposes updates to: 1) Amend ARM 17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, and 17.8.1402 to remove repetitive text describing the location of rule reference material and centralize and consolidate those reference citations into sections 17.8.102(3) and (4); 2) Modify air quality rules by correcting an internal reference in ARM 17.8.904; 3) Amend ARM 17.8.102(2), to remove the exemptions of 40 CFR part 63, subparts JJJJ and KKKKK; 4) Remove references to 40 CFR parts 60, 61, and 63 in sections 17.8.102(2), 17.8.103(1)(f)-(i), 17.8.302(1)(a)-(c), 17.8.767(1)(c)-(d), 17.8.802(1)(c)-(d), 17.8.902(1)(a)-(b), and 17.8.1002(1)(a)-(b), for which Montana is already delegated authority; and 5) Update ARM 17.8.102(1) to incorporate by reference the 2016 version of the CFR and the 2015 version of the USC.

### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in section II. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not proposed to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## **List of Subjects in 40 CFR Part 52**



Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 4, 2019.

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Debra Thomas,  
Acting Regional Administrator,  
EPA Region 8.

[FR Doc. 2019-12156 Filed: 6/7/2019 8:45 am; Publication Date: 6/10/2019]